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Angela Walker

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Foreword: Reflections on the 10th Anniversary of the Journal of International Human Rights

Angela Walker*

- ¶1 Ten years ago, when *Northwestern University's Journal of International Human Rights* (JIHR) was born, human rights rarely captured the headlines, much less the legal debate. Much has changed. Human rights struggles in Tibet, China, Colombia, Mexico, the Middle East and North Africa have seized the international community's attention. Today, JIHR's publications are more relevant and timely than ever.
- ¶2 Founded for the purpose of promoting the discussion of international human rights law, this award-winning journal has advanced the protection of human rights around the world. JIHR has published high profile authors ranging from distinguished professors, such as M. Cherif Bassiouni, the world's leading authority on international criminal law, and David Scheffer, former U.S. Ambassador at Large for War Crimes; to Colonel Mukul Saxena of the Indian Army (The Sikh Regiment in Kashmir); to Richard Williamson, former U.S. Representative to the U.N. Commission on Human Rights; to Judge Wolfgang Schomburg of the Appeals Chambers of the International Criminal Tribunals for the Former Yugoslavia and Rwanda.
- ¶3 JIHR is widely known for its Atrocity Crimes Litigation Year-in-Review publication, which highlights the latest developments in international criminal law and is subscribed to by leading judges, attorneys, and scholars around the world. The publication features the annual Atrocity Crimes Litigation Year-in-Review Conference, convened by the Center for International Human Rights at Northwestern University School of Law, where tribunal registrars, prosecutors, defense counsel, and scholars examine the practice and jurisprudence of international tribunals over the previous year, and postulate on future developments. No other law school journal publishes an issue of this character.
- ¶4 The articles JIHR has published go beyond the field of international criminal law and have affected discourse on subjects that range from "State Obligations Regarding Domestic Violence" to "Designing More Effective Laws Against Human Trafficking" to "The Growing Relevance and Enforceability of Corporate Human Rights Responsibility." Lastly, the journal has sponsored prominent visiting speakers from Mexico to the Israeli Bedouin community who have spoken on the latest human rights developments in their regions. JIHR wishes to thank all of the authors and speakers for their contributions over the course of the past ten years that have helped to shape the field of international human rights law.
- ¶5 In its tenth anniversary year, JIHR further advances the field of international human rights law by publishing this special edition. *Front Lines: Rule of Law in Haiti and Beyond* highlights two cutting edge legal developments that have been successful in creating a more effective rule of law both within Haiti and beyond its borders. In reflecting back upon one of JIHR's first issues, which featured the rule of law and human rights following NATO's intervention in the Balkans, it is evident the field has come a long way. While the leading thinkers and practitioners featured in this publication discuss rule of law initiatives that widely diverge, together the initiatives play an important role in more effectively and sustainably protecting human rights.

We are pleased to offer these rule of law developments that may be used as models in other regions struggling to get back on their feet.

While the immediate needs of the population in post-earthquake Haiti, such as shelter and basic health care, have captured the attention of international aid bodies and national leaders, long-term needs such as good governance, economic reconstruction, and rule of law are of equal importance. Rule of law is arguably a prerequisite for the social, economic, and political stability necessary to sustainably address both a nation's short- and long-term needs.¹

No longer is rule of law viewed as the mere holding of fair elections. Rather, it is the engagement of civil society in implementing and enforcing sufficient internal checks and balances to ensure that government applies the law in a predictable and transparent manner.² Several factors that uphold the proper functioning of the rule of law, which are addressed in the following articles, are: (1) supremacy of the law over corruption and accountability of government officials for failure to follow or apply the law;³ (2) efficient and predictable⁴ implementation of the law, or "law and order;" (3) equality of persons before the law among all persons similarly situated;⁵ and (4) implementation of, and respect for, human rights⁶ in a manner consistent with international standards.⁷ The predictability and transparency inherent in rule of law in turn helps to promote economic growth and builds peace in post-conflict states.⁸

I. HAITI'S HISTORICAL STRUGGLE WITH RULE OF LAW

Arguably the world's "unluckiest country,"⁹ Haiti is the poorest nation in the Western Hemisphere, and one of the poorest on the planet,¹⁰ having struggled through both natural and man-made disasters even before this extractive colony achieved its independence in 1804.¹¹ It

* Candidate for Juris Doctor and LLM in International Human Rights, Northwestern University School of Law, May 2013; Editor-in-Chief, *Northwestern University Journal of International Human Rights*, vol. 10. *Front Lines: Rule of Law in Haiti and Beyond* would not have been possible without the support of the faculty and staff of Northwestern University School of Law. We would like to extend special thanks to Jim McMasters, Professor David Scheffer, and all of the authors who contributed to this issue.

¹ James D. Wilets & Camilo Espinosa, *Intercultural Human Rights Law Review Annual Symposium November 5, 2010, Rule of Law in Haiti Before and After the 2010 Earthquake*, 6 INTERCULTURAL HUM. RTS. L. REV. 181, 182 (2011).

² *Id.* at 185.

³ *United Nations and the Rule of Law*, UN.ORG, <http://www.un.org/en/ruleoflaw/> (last visited Oct. 26, 2011).

⁴ Kirsti Samuels, *Rules of Law Reform In Post-Conflict Countries*, 2 (THE CONFLICT PREVENTION AND RECONSTRUCTION UNIT IN THE SOC. DEV. DEP'T OF THE SUSTAINABLE DEV. NETWORK OF THE W. BANK, Working Paper No. 37, 2006).

⁵ *Id.*

⁶ *Id.*

⁷ Wilets & Espinosa, *supra* note 1, at 184.

⁸ *Id.* at 185-86.

⁹ Joshua Keating, *The Unluckiest Country*, FOREIGN POL'Y, Jan. 14, 2010, available at http://www.foreignpolicy.com/articles/2010/01/14/the_unluckiest_country.

¹⁰ *Central America and Caribbean: Haiti*, THE WORLD FACTBOOK, U.S. CENTRAL INTELLIGENCE AGENCY (Mar 16, 2011), <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (follow "economy" hyperlink) (last visited May 18, 2011).

¹¹ Jeffery M. Brown, *Intercultural Human Rights Law Review Annual Symposium November 5, 2010: Benevolent Assistance Or Bureaucratic Burden?: Promoting Effective Haitian Reconstruction, Self-Governance, And Human Rights Under The Right To Development*, 6 INTERCULTURAL HUM. RTS. L. REV. 209, 211 (2011).

has also been characterized by a lack of rule of law¹²—with periods of dictatorships and despotic rule along with extraordinarily high levels of corruption.¹³

¶9 The role of corruption in weakening rule of law has pervaded all levels of Haitian society.¹⁴ On a scale from one to ten, one being the worst, Haiti in 2010 had a score of 2.2, ranking the country as one of the world's most corrupt countries.¹⁵

¶10 Suppression of a democratic civil society has led to a dearth of effective, well-organized, and independent political and social institutions as well as checks on government functioning.¹⁶ That is not to say that a formal democracy necessarily ensures the development of rule of law. After the repressive Duvalier regime ended,¹⁷ Haiti's first democratically elected president, Jean-Bertrand Aristide, suffered an initial coup, was forced into exile, resumed the presidency in 1994, and was forced again into exile in 2004.¹⁸ Without rule of law, democratic elections cannot alone ensure social, economic, and political stability.

II. RULE OF LAW IN POST-EARTHQUAKE HAITI

¶11 On January 12, 2010, the earthquake collapsed the very infrastructure necessary to implement even the most basic elements of rule of law. The earthquake decimated Port-au-Prince and left more than 200,000 people dead and 300,000 injured.¹⁹ 105,000 homes were destroyed and another 208,000 were damaged,²⁰ leaving approximately one million people homeless.²¹ Government buildings, foreign aid offices, schools, hospitals, and police stations all lay in ruins; the government lost 40 percent of its civil servants.²²

¹² Vivienne O'Connor, *The Rule of Law in Haiti After the Earthquake*, UNITED STATES INSTITUTE FOR PEACE (Apr. 15, 2010), <http://www.usip.org/files/resources/PB%2018%20Rule%20of%20Law%20in%20Haiti%20After%20the%20Earthquake.pdf>.

¹³ Robert Perito & Greg Maly, *Haiti's Drug Problem*, <http://www.usip.org/publications/haitis-drug-problem> (last visited Oct. 26, 2011) (describing Haiti's extensive periods of repressions and other causes of these periods of corruption and despotism).

¹⁴ Wilets & Espinosa, *supra* note 1, at 190 (citing Nancy Roc, *Haiti: the bitter grapes of corruption*, FRIDE.ORG (Mar. 23, 2009), <http://www.fride.org/publication/583/haiti:-the-sour-grapes-of-corruption.>).

¹⁵ *2010 Corruption Perceptions Index Report*, TRANSPARENCY INT'L, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail#3 (last visited Oct. 26, 2011).

¹⁶ Wilets & Espinosa, *supra* note 1, at 190.

¹⁷ Haiti achieved notoriety during the brutal dictatorships of the voodoo physician Francois "Papa Doc" Duvalier and his son, Jean-Claude, or "Baby Doc." Tens of thousands of people were killed under their 29-year rule. *Haiti Country Profile*, BBC NEWS, http://news.bbc.co.uk/2/hi/americas/country_profiles/1202772.stm (last visited Oct. 26, 2011).

¹⁸ Brian Concannon Jr., *'The Return': Aristide, Law and Democracy in Haiti*, *Director of the Institute for Justice and Democracy in Haiti*, JURIST, <http://jurist.law.pitt.edu/forumy/2006/06/return-aristide-law-and-democracy-in.php> (last visited May 23, 2011).

¹⁹ *Haiti, USAID Post-Earthquake Response*, USAID, <http://www.usaid.gov/ht/helphaiti.html> (last visited Oct. 26, 2011).

²⁰ *Billions pledged to Haiti for rebuilding, will poverty end too?*, DIGITAL JOURNAL, Mar. 31, 2010, at A1.

²¹ *Earthquakes with 1,000 or More Deaths since 1900*, U.S. GEOLOGICAL SURVEY (Apr. 14, 2011), http://earthquake.usgs.gov/earthquakes/world/world_deaths.php (stating that a million were left homeless). *But see* Randal C. Archibold, *U.S. reduces estimates of Homeless in Haiti Quake*, THE NEW YORK TIMES (May 31, 2011), available at <http://www.nytimes.com/2011/06/01/world/americas/01haiti.html> (stating that a May 13, 2011 U.S. government report found that 895,000 people were initially displaced). Regardless of the how many thousands of people were displaced, the damage was extensive in this small, impoverished island nation.

²² U.N. Press Conference Department of Public Information, New York, U.S., Jan. 10, 2011, *Press Conference on Haiti's Reconstruction, One Year after Earthquake*, 1.

¶12 Before the earthquake, few people visited Haiti. Now, many have made it their mission to offer help and relief. The international community joined forces and delivered hundreds of millions of dollars to Haiti through NGOs.²³ Since the earthquake, Haiti has had more nongovernmental organizations offering their relief services than any nation in the world except India, a country one hundred times more populous than Haiti.²⁴ Both the logistical problems created by the earthquake²⁵ and complaints that political leaders and the elite have been benefiting from the reconstruction,²⁶ however, have impeded the delivery of foreign aid²⁷ and have caused not only frustration amongst the local population, but also international donor fatigue.

¶13 Haiti's justice system, long troubled by politicization, corruption, a shortage of resources, and lack of transparency, was also severely impacted.²⁸ The infrastructure of the judiciary in and around Port-au-Prince collapsed or had extensive damage. The Ministry of Justice and the Palais de Justice of Port-au-Prince, hosting the Court of First Instance, the Appeals Court, and the Supreme Court were totally destroyed. Fourteen Courts of the Peace, which for the majority of the population is their only access to the justice system, were also damaged or destroyed.²⁹

¶14 The material damage was calculated at approximately 120 percent of the country's annual GDP.³⁰

¶15 In addition to the serious brain-drain that post-earthquake Haiti experienced, which exacerbated Haiti's unemployment rate, already one of the highest in the Western Hemisphere,³¹ the physical safety of those who remain also undermines development efforts. People suffer from lack of housing and basic utilities, organized gang violence, increasing levels of violence against women, including rape,³² and the cholera epidemic that killed 6,000 and infected 419,000 people in the ten months after the disease first appeared in October 2010.³³

²³ Wilets & Espinosa, *supra* note 1, at 200.

²⁴ Isabelle Dupuy, *Haiti's New Tourists*, THE NEW YORK TIMES (Sept. 6, 2011), *available at* <http://www.nytimes.com/2011/09/07/opinion/07iht-eddupuy07.html>.

²⁵ *Haiti's Human Rights Challenge*, AMNESTY INT'L (Jan. 29, 2010), <http://www.amnesty.org/en/news-and-updates/haitis-human-rights-challenge-20100129>.

²⁶ Amnesty Int'l, *Haiti: After the Earthquake*, AI Index AMR 36/004/2010, Mar. 25, 2010, http://www.amnesty.org/en/library/asset/AMR36/004/2010/en/d12_e3cdc-2103-40b8-af57-1412dcf3d413/amr360042010en.pdf.

²⁷ Wilets & Espinosa, *supra* note 1, at 201.

²⁸ Human Rights Watch, *World Report 2011: Haiti*, Jan. 2011, <http://www.hrw.org/en/worldreport-2011/haiti>.

²⁹ Amnesty Int'l, *supra* note 26.

³⁰ Human Rights Watch, *supra* note 28.

³¹ THE WORLD FACTBOOK, *supra* note 10 (estimating that nearly two-thirds of the Haitian labor force remain unemployed or underemployed after the 2010 earthquake).

³² Brown, *supra* note 11, at 215 n.18 (citing U.N. Secretary-General, *Rep. of the Secretary-General on the U.N. Stabilization Mission in Haiti*, U.N. Doc. S/2010/446 (Sept. 1, 2010) (observing that rapes, kidnappings, domestic violence, crimes against children and other outrages remained a major security risk and an impediment to long-term sustainable development in Haiti)).

³³ These cholera outbreaks result from "significant breaches in the water, sanitation, and hygiene infrastructure used by groups of people, permitting large-scale exposure to food or water contaminated with *Vibrio cholerae* organisms..." (emphasis added). *Haiti Cholera Outbreak*, CENTERS FOR DISEASE CONTROL A215 ND PREVENTION, http://www.cdc.gov/haiticholera/cholera_qa.htm (last visited, Oct. 26, 2011).

III. AN OVERVIEW OF JIHR'S 10TH ANNIVERSARY *FRONT LINES* ISSUE

¶16 Amidst the dire statistics and the turmoil that continue to plague this small island nation, change is happening. Haiti is rebuilding its country, and in the process is emerging as a nation where several cutting edge legal developments have taken root. Some of these developments are spearheaded by the international community while others are led by grassroots efforts on the ground in Haiti. Through rebuilding its own legal system, Haiti offers guidance to other nations.

¶17 The two articles in JIHR's 10th anniversary issue, *Front Lines: Rule of Law in Haiti and Beyond*, examine two of these legal developments that have not only strengthened Haiti's own rule of law, but have also had a resounding impact in societies and their legal systems around the globe. While both articles concern methods of strengthening the rule of law, they approach the issue from two distinct angles; one concerns society's most powerful and wealthy and the other focuses on the poor and marginalized. Together, they target both accountability at the top and mass organizing at the bottom to enact change.

¶18 The first article, *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, is authored by three attorneys from the Institute for Justice & Democracy and its sister organization, the Bureau des Avocats Internationaux (BAI), based in Port-au-Prince. Meena Jagannath, Nicole Phillips, and Jeena Shah suggest a new, more sustainable model of lawyering for poor and marginalized populations.

¶19 The BAI has developed and implemented a legal empowerment approach to human rights lawyering for Haiti's Internally Displaced Persons (IDPs), in particular women and the homeless. The legal empowerment approach "moves beyond legal representation in the courts."³⁴ Legal representation is combined with community empowerment and organizing to create political spaces for disenfranchised populations to reclaim their rights.³⁵ The attorneys incorporate organizing strategies into their legal cases by using "grassroots coordinators." The grassroots coordinators work with BAI's lawyers to organize rights trainings for grassroots groups and facilitate their advocacy efforts, such as engagement with the media, demonstrations, and meeting with government officials. The legal and political strategies reinforce one another; "the lawsuits provide a foundation for the communities' organizing while the political pressure helps advance cases through the courts and compel a judicial response."³⁶

¶20 The authors explain, "The value of the rights-based approach lies not only in its means, but also in its outcomes. An approach that consults with and *listens* to the target population is more effective in responding to its needs."³⁷

¶21 The second article in JIHR's *Front Lines* issue, *Beyond the Duvalier Legacy: What New "Arab Spring" Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery*, analyzes a ground-breaking development in the global fight against corruption, a fight with which Haiti is all too familiar. Mark Vlastic, the former head of operations of the World Bank's StAR Initiative, where he served on the Duvalier/Haiti asset recovery team, and Greg Cooper, a former Fulbright Scholar at the International Centre for Asset Recovery, explain that stolen asset recovery is quickly emerging as one of the more high profile aspects of holding corrupt political leaders accountable and developing the rule of law. The article addresses the case of former Haitian President Jean Claude "Baby Doc" Duvalier, who stole the equivalent of approximately

³⁴ Meena Jagannath, Nicole Phillips, & Jeena Shah, *A rights-based approach to lawyering: Legal empowerment as an alternative to legal aid in post-disaster Haiti*, 10 NW. U. J. INT'L HUM. RTS. 7, 17 (2011).

³⁵ *Id.* at 9.

³⁶ *Id.* at 10.

³⁷ *Id.* at 8.

1.7 to 4.5 percent of Haiti's entire GDP for every year he was in power, according to a joint report by the World Bank and United Nations.³⁸ Earlier this year, Duvalier returned to Haiti after 25 years of exile in France, just days before a new Swiss law came into effect that would enable the return of his frozen assets to Haiti.

¶22

The authors write, "Considering the grand corruption allegations involving such recently deposed leaders as Zine El Abidine Ben Ali of Tunisia and Moammar Gaddafi of Libya, this article suggests that a review of the Duvalier matter—including the links between poverty and corruption and the subsequent efforts to recover Duvalier's assets—may provide some 'lessons learned' to future corruption hunters working in the wake of the 'Arab Spring.'"³⁹ The Duvalier case has not only fostered international cooperation, but it has also helped Haitian authorities gain valuable anticorruption experience. The authors conclude by suggesting that Haitian officials might in the future serve as educators in the international community to help other developing countries with their asset recovery cases—"providing ever-helpful South-South cooperation and training."⁴⁰

¶23

It is when we are down that we collaborate with others and devise creative approaches to pick ourselves back up. The creative approaches analyzed in the following pages address leading human rights initiatives concerning protection of the disenfranchised—international asset recovery and a more holistic approach to offering legal representation to marginalized populations. We hope the articles in this special edition will show how initiatives with widely divergent approaches can play equally significant and even complementary roles in advancing the rule of law in challenging contexts like Haiti.

³⁸ U.N. OFFICE ON DRUGS AND CRIME & WORLD BANK, STOLEN ASSET RECOVERY (STAR) INITIATIVE: CHALLENGES, OPPORTUNITIES, AND ACTION PLAN 10 (2007), available at <http://www.unodc.org/documents/corruption/StAR-Sept07-full.pdf>.

³⁹ Mark V. Vlasic & Gregory Cooper, *Beyond the Duvalier Legacy: What New "Arab Spring" Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery*, 10 NW. U. J. INT'L HUM. RTS. 19, 20 (2011).

⁴⁰ *Id.* at 26.